Supreme Court, U.S.
FILED
DEC 27 2001
CLERK

No. 01-729

In The

Supreme Court of the United States

RONALD L. OTTE and BRUCE BOTELHO,

Petitioners,

v.

JOHN DOE I, JANE DOE, and JOHN DOE II,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF IN OPPOSITION

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TABLE OF CONTENTS

Page

BRIEF IN OPPOSITION 1

STATEMENT OF THE CASE 1

A. Introduction 1

B. The ASORA 3

C. Proceedings Below 5

D. The Ninth Circuit's Decision 7

REASONS FOR DENYING THE PETITION 8

I. Summary of argument 8

II. The Petitioners' Lament Over An Admission Made During Oral Argument 9

III. The Ninth Circuit's decision does not erode Alaska's ability to protect the public from sex offenders 14

IV. The Ninth Circuit's decision is not in conflict with a decision from the Tenth Circuit 16

V. The Ninth Circuit did not err by disregarding the Legislature's remedial intent 19

CONCLUSION 25

TABLE OF CONTENTS, Continued

APPENDIX

TRANSCRIPT OF ORAL ARGUMENT (EXCERPT), August 1, 2000 ..... 1a

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED 16a

CONSTITUTIONAL PROVISIONS 16a

ALASKA COURT RULES 16a

ALASKA STATUTES 20a

TABLE OF AUTHORITIES

Cases **Page**

Abraham v. Alaska,
585 P.2d 526 (Alaska 1978) 1

Bowen v. Georgetown Univ. Hosp.,
488 U.S. 204 (1988) 11

Calder v. Bull,
3 U.S. (3 Dall) 386 (1798) 14

Curry v. Baker
479 U.S. 1301 (1986) 17

Doe v. Attorney General,
715 N.E.2d 37 (Mass. 1999) 22

Doe v. Otte,
259 F.3d 979 (9th Cir. 2001) 1, 2, 6-8, 12, 15, 16-19

Drye v. U.S.,
528 U.S. 49 (1999) 17

Femedeer v. Haun,
227 F.3d 1244 (10th Cir. 2000) 16-19

Ferguson v. State, Dept. of Corrections,
816 P.2d 134 (Alaska 1991) 1

Flemming v. Nestor,
363 U.S. 603 (1960) 21

TABLE OF AUTHORITIES - Continued

Fletcher v. Peck,
10 U.S. (6 Cranch) 87 (1810) 14
Hawker v. New York,
170 U.S. 189 (1898) 20-22
Kansas v. Hendricks,
521 U.S. 346 (1997) 20
Kennedy v. Mendoza-Martinez,
372 U.S. 144 (1963) 7, 17
Lewis v. Grinker,
965 F.2d 1206 (2nd Cir. 1992) 11
NAACP v. Alabama,
377 U.S. 288 (1964) 15
Reno v. A.C.L.U.,
521 U.S. 844 (1997) 23
Rowe v. Burton,
884 F.Supp. 1372 (D. Alaska 1994) 5
Russell v. Gregoire,
124 F.3d 1079 (9th Cir. 1997),
cert. denied sub non.,
Stearns v. Gregoire,
523 U.S. 1007 (1998) 15

TABLE OF AUTHORITIES - Continued

Seling v. Young,
531 U.S. 250 (2001) 11
Totemoff v. State,
905 P.2d 954 (Alaska 1995) 11
U.S. v. Ward,
448 U.S. 240 (1980) 10
Weisgram v. Marley Co.,
528 U.S. 440 (2000) 17

Regulations

13 Alaska Admin. Code § 09.025 (1999) 10
13 Alaska Admin. Code § 09.030 (1999) 10

Statutes

1994 Alaska Sess. Laws ch. 41, § 1 3
1995 Alaska Sess. Laws ch. 41, § 12(a) 4
Ak. Stat. 11.51.100(a)(2)(A) (1998) 24
Ak. Stat. 11.56.835 (1998) 4
Ak. Stat. 12.63.010 (1994) 3
Ak. Stat. 12.63.010(a) (1998) 4, 10, 11
Ak. Stat. 12.63.100 (1994) 3
Ak. Stat. 18.65.087 (1994) 3
Ak. Stat. 34.70.050 (1998) 24
Ak. Stat. 47.10.011(7) (1998) 24

TABLE OF AUTHORITIES - Continued

Alaska Court Rules

Alaska Rules Criminal Procedure
Rule 11 4

Alaska Rules Criminal Procedure
Rule 32 4

BRIEF IN OPPOSITION

Respondents ["The Does"] respectfully request that this Court deny the petition for writ of certiorari because petitioners have failed to show compelling reasons, meeting the criteria listed in this Court's Rule 10, that justifies the exercise of this Court's discretionary jurisdiction.

STATEMENT OF THE CASE

A. Introduction.

Article I, Section 12, of the Alaska Constitution accords the Does the right to rehabilitate and reintegrate with all the attendant rights possessed by any other member of the public. *Abraham v. Alaska*, 585 P.2d 526, 531 (Alaska 1978). This right is protected by the Due Process Clause of the 14th Amendment. *Ferguson v. State, Dept. of Corrections*, 816 P.2d 134, 139 (Alaska 1991).

In 1985, Doe I entered a plea of nolo contendere to a charge of intra-family sexual abuse. *Doe v. Otte*, 259 F.3d 979, 983 (9th Cir. 2001); *Pet. App. at 4a.* He was released from prison in 1990. *Id.* After his release, a state court determined that he was successfully rehabilitated and granted him custody of his minor daughter. *Id.* The state court's determination was based, in part, on psychiatric evaluations concluding that Doe I was Aa very low risk for re-offending@ and is Anot a pedophile.@ *Id.* He remarried, and is a productive member of the community. *Id.*

Doe II was convicted via a nolo contendere plea in 1984. *Doe*, 259 F.3d at 983, *Pet. App. at 4a.* He was convicted of sexual abuse of a 14 year old child and was released from prison in 1990. *Id.* After his release, he

successfully completed a two-year program for treatment of sex offenders. *Id.*

Notwithstanding the Does right to reintegrate and regain the respect, rather than the fear and loathing of their fellow citizens[1], and notwithstanding the fact that the Does were rehabilitated and reintegrated, the Alaska legislature concluded that certain reintegrated prior-offenders were dangerous and should be supervised for life. Petitioners admit, the past conviction operates as conclusive proof of future dangerousness and the need for a lifetime registration requirement. *Pet. at 13.* Petitioners contend that imposition of this lifetime registration and public notification requirement, based only on a past conviction is regulatory. *Pet. App. at 79a.* Petitioners, however, have never been able to identify exactly what activity they are regulating. *Resp. App. at 7a.*

The Does argue that the Ninth Circuit court of appeals properly applied, well established law and concluded the ASORA was excessive in light of its purported regulatory purpose, and that retroactive application of the Alaska Sex Offender Registration Act ["ASORA"] violates the Ex Post Facto Clause. *Doe*, 259 F.3d at 993-994, *Pet. App. at 28a - 29a.* No stay of the mandate was requested, and petitioners now seek a writ of certiorari from this Court. In doing so, they have completely failed to demonstrate the existence of any compelling reason why a writ should issue.

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1 . *Abraham v. Alaska*, 585 P.2d at 531

B. The ASORA.

The ASORA was first passed by the Alaska legislature in 1994. § *1 ch. 41 SLA 1994*; Ak. *Stat. 12.63.010 (1994).* This version required previously convicted offenders to register with, and periodically report to the authorities. It also required registrants to immediately report any change in residence, and to update their registration information once per year. *Ak. Stat. 12.63.010(c) & (d) (1994).* Application of the ASORA§s provisions are triggered solely by the prior conviction. *Ak. Stat. 12.63.100 (1994).*

Alaska created a central registry of sex offenders. *Ak. Stat. 18.65.087 (1994).* All information obtained during the registration process is kept in this central registry, and the offender's name, current address, photograph, place of employment, date of birth, crime for which convicted, date of conviction, place and court of conviction, and length of sentence was available on demand to the general public.[2] *Ak. Stat. 18.65.087(b) (1994)* .

The legislature placed these new disabilities in Title 12 of the Alaska Statutes, which contains Alaska's criminal procedure and sentencing provisions. Moreover, it amended Rules 32 and 11 of the Alaska Rules of Criminal Procedure. Criminal Rule 11 was

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2 . Under the 1994 version, a specific demand for information was required, but under the 1998 amendments, Alaska published all of the information on the Internet. *See*, Internet Address: *http://www.dps.state.ak.us/Sorcr.* This site is maintained by the State of Alaska, Department of Public Safety.

amended to require the duty to register be a "written" part of any plea agreement involving a sexual offense. Criminal Rule 32(b) was amended by requiring the duty to register to be a "written" part of any sentence imposed for a sex offense. The legislature intended that the ASORA apply retroactively to offenses committed prior to the effective date. § *12(a) ch. 41 SLA 1994.*

In 1998, the legislature made sweeping changes to the ASORA and related criminal statutes. In amending the ASORA, the legislature created a new offense for failure to register, and increased the classification of that offense from a misdemeanor to a felony. *Ak. Stat. 11.56.835 (1998).* The legislature also added those persons convicted of child kidnaping as persons who would be required to register under the ASORA. *Ak. Stat. 12.63.010(a) (1998).*

The 1998 amendments increased the amount of information to be collected and disclosed by an offender. *Ak. Stat. 12.63.010 (1998).* It also increased the length of the reporting requirement -- for some offenders, including the Does, from 15 years to life. *Ak. Stat. 12.63.010(d)(2) (1998).* Additionally, the amendments increased the frequency with which an offender must re-register. For persons required to register for life, re-registration must occur four times per year. *Id.*[3] During

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[3] . Under the 1994 version of the ASORA, the Does were required to register for a period of 15 years, and re-
Continued .....

each quarterly re-registration, the same information must be collected and provided, even if there are no changes in the information. *Id.*

C. Proceedings Below.

In 1994, the Does filed a complaint seeking injunctive relief and a declaratory judgment pursuant to *28 U.S.C. § 1343(3), 42 U.S.C. § 1983* and *28 U.S.C. § 2201. Pet. App. A-74a.* The district court granted a preliminary injunction, which required the Does' registration but precluded release of registration information. *Rowe v. Burton*, 884 F.Supp. 1372, 1385 (D. Alaska 1994). The Does also sought leave to proceed under pseudonyms, which leave was denied. *Rowe*, 884 F.Supp. at 1388. The Does successfully appealed that part of the district court's decision denying leave to proceed under pseudonym. *Pet. App. at 74a, fn. 15.*

In July 1998, petitioners filed a motion for summary judgment. *Pet. App. at 75a-76a.* The Does opposed and filed a cross-motion. *Id.* Petitioners made no attempt to support any statement of fact with evidence.[4]

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register once per year. Under the 1998 version, the Does are required to register for life, and re-register four times per year.

[4] . Petitioners make numerous representations of fact in their petition to this Court, which are unsupported by any evidence, either in the record before the district or appellate court, or in their appendix. *E.g., Pet. at 2-3.* Apparently, petitioners believe they need not support facts with evidence, and the
Continued .....

The Does submitted several affidavits supporting the excessive and punitive nature of the ASORA. *Pet. App. at 14a-15a. 107a. Id.* at *107a fn. 25.* One affidavit was from a former Alaska field service probation officer who compared the ASORA to other forms of criminal supervision under Alaska Law, e.g., probation, mandatory parole, and discretionary parole, and who concluded that the ASORA was nothing more than a disguised form of supervision. She also provided uncontested proof that prior offenders were losing employment and housing opportunities because the State published their names, addresses and places of employment on the World Wide Web. The State never contested any of the Does' evidence. In fact, the Ninth Circuit recognized that the Doe's evidence was Auncontradicted.@ *Doe*, 259 F.3d at 994, *Pet. App. at 28a.*

In 1999, the district court granted petitioners' motion for summary judgment. *Pet. App. at 69a, 118a.* In doing so, the district court considered the 1998 amendments, enacted during the course of the litigation. *Pet. App. at 70a, fn. 3.* The Does appealed that decision, and the Ninth Circuit reversed. *Doe*, 259 F.3d at 993-

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Court should believe every word they say; at least, until they later say they were mistaken, in which case they maintain if the Court were to believe them it would constitute reversible error. *Pet., at 15.*

995; *Pet. App. at 1a.*. Petitioners now seek a writ of certiorari.

D. The Ninth Circuit's Decision.

In considering whether the ASORA was punishment for purposes of Ex Post Facto analysis, the Ninth Circuit applied the Aintent-effects test.@ *Doe*, 259 F.3d at 984-985; *Pet. App. at 8a -9a.* In doing so, the panel considered the ASORA as a whole -- it did not separate the registration and public notification provisions. *Id.* It did so because the ASORA was enacted as a single piece of legislation, the Alaska Court of Appeals had previously applied the test to the ASORA as a whole, and the parties agreed that a unitary analysis was appropriate. *Doe*, at 985; *Pet. App. at 9a.*

In applying the "intent-effects test", the Ninth Circuit first examined the structure and design of the ASORA and concluded that the ASORA had a non-punitive intent. *Doe*, 259 F.3d at 986; *Pet. App. at 10a - 12a.*. In considering the ASORA's effect, the panel applied the seven factors enumerated in *Kennedy v. Mendoza-Martinez*, 372 U.S. 144 (1963). *Doe*, 259 F.3d at 986; *Pet. App. at 12a - 27a.* The panel concluded that the Does had shown by the "clearest proof" that notwithstanding the legislature's non-punitive intent, the ASORA should be classified as punitive for Ex Post Facto purposes. *Doe*, at 993-994; *Pet. App. at 28a.* The panel held that four of the seven *Kennedy* factors compelled this result. *Id.* Although there were other issues raised

in the appeal, the panel held it did not have to consider other arguments because the Ex Post Facto Clause barred application of the ASORA to Doe I and Doe II. *Doe*, 259 F.3d at 995; *Pet. App. at 31a.* Thus, Jane Doe received all of the relief she sought. *Id.*

REASONS FOR DENYING THE PETITION

I. Summary of argument.

Rule 14(1)(h) of this Court's rules of procedure requires a direct and concise argument discussing the factors listed in this Court's Rule 10, which a petitioner contends counsel in favor of granting the petition. Petitioners fail to recognize the existence of Rule 10, and they have failed to provide a direct and concise discussion of reasons warranting allowance of the writ. *See, Pet., generally.*

Petitioners' failure to consider this Court's Rule 10 and the factors listed therein resulted in a petition that is devoid of merit. *Pet. generally.* This is so, because the Ninth Circuit's decision does not erode the State's ability to protect its citizens. *Pet. at 6.* Rather, it requires petitioners to protect the rights of reintegrated, prior offenders and their families, who are also productive citizens of the State. Moreover, petitioners' complaint about an alleged misstatement of Alaska law likewise lacks merit. *Pet. at 11.* This is because, even if it were true, the error would not change the result and harmless error does not represent important and compelling reasons justifying an exercise of this Court's

discretionary jurisdiction. *Sup. Ct. R. 10.* Finally, petitioners' contention that a conflict exists between the Tenth and Ninth Circuits is also without merit. *Pet. at 9.* This is so because no conflict exists. It is also true because petitioners have failed to show that two circuit courts have applied or interpreted the same body of federal law differently. *Pet. generally.* At most, all petitioners have done is allege that either the Ninth or the Tenth Circuit misapplied a properly stated rule of law, but that is not grounds for issuance of a writ. *Sup. Ct. R. 10.*

II. The Petitioners' Lament Over An Admission Made During Oral Argument.

Petitioners' basic complaint is that the Ninth Circuit adopted a "verifiably false interpretation of Alaska's law" when it relied on counsel's statements at oral argument. *Pet. at 11, 15..* Notably, petitioners made this same complaint in seeking rehearing, and in suggesting rehearing *en banc*, both of which were denied.[5] *Pet. App. at 123a..* There are two reasons why petitioners' complaint about this alleged misstatement fails to meet the compelling reasons test envisioned by this Court's Rule 10.

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[5] . Although petitioners have previously complained about this alleged misstatement they have never provided a transcript of that statement so it could be viewed within the context in which it was made. Respondents provide that transcript. *Respondents' Appendix. 1a.*.

First, it was not a misstatement of Alaska law. Petitioners, through counsel, told the Ninth Circuit that under current law the Does could be required to report four times per year to the local police station. *Resp. App. at 4a.* Under current law, that could in fact be the case. *Ak. Stat. 12.63.010(d)(2) (1998).* The particular provision says that a registrant will register four times per year for the rest of his/her life, "in the manner required by the department." *Id.* Hence, the department could require in person reporting if it chose to do so. Indeed, in exercising the unfettered discretion vested by the statute, petitioners could even decide to have a uniformed officer contact the registrant at his job and require the form be sworn to in front of the officer. Or, the same could be true for the registrant's home. The point being, the statute does not limit the procedures to be employed, and it provides no safeguards to protect registrants.

In an attempt to show that counsel's admission was a misstatement of the law, petitioners ignore the statute and cite to a regulation. *Pet. at 11, citing 13 Alaska Admin. Code §§ 09.025, 09.030.* The fatal flaw in this argument is that in applying the "intent-effects" test, the Ninth Circuit was required to, and did in fact, examine the ASORA on its face. *U.S. v. Ward*, 448 U.S. 240, 248 (1980). It was not required to look to the

manner in which petitioners applied the ASORA.[6] *Seling v. Young*, 531 U.S. 250, 263 (2001). In properly applying decisions from this Court, and in examining the ASORA on its face, the particular provision allows unfettered discretion. It clearly allows an interpretation that could require in person reporting four times per year. *Ak. Stat. 12.63.010(d)(2) (1998).* That being the case, the statement was not a misstatement, and the Ninth Circuit did not adopt a "verifiably false interpretation of Alaska's law". *Pet. at 11, 15..*

Second, petitioners' argument has no merit because even if counsel made a misstatement of Alaska law, it was a harmless error - it would not change the result reached by the Ninth Circuit. *Pet. App. 1a.* This is so because in concluding that retroactive application of the ASORA violated the Ex Post Facto Clause, the court of appeals considered both the registration and public notification provisions as a whole, not just the registration aspect. *Doe*, 259 F.3d at 985, *Pet. App. at 9a.*

If, as petitioners contend, the in person reporting requirement was a misstatement of Alaska law, that

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6 . In fact, even the Alaska Supreme Court has held that it is improper to consider an administrative interpretation adopted during the course of litigation when interpreting a statute. *See, Totemoff v. State*, 905 P.2d 954, 967 (Alaska 1995). Lower federal court's have similarly so held. *See, Lewis v. Grinker*, 965 F.2d 1206, 1220 (2nd Cir. 1992), *citing, Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 212-13 (1988).

small section of the ASORA relates only to registration - it has nothing to do with the excessive nature of the other registration provisions or the public notification requirements. *Doe*, 259 F.3d at 993, *Pet. App. at 28a - 29a.* That being true, any alleged error in relying on petitioners' concession would not change the fact that many other provisions, including the public notification provisions and the lack of an escape mechanism, also make the ASORA excessive in light of its purported regulatory purpose. *Id.* Moreover, it does not change the fact that one of the many reasons supporting the finding that the ASORA was excessive in relation to its purported regulatory purpose was that it lacked any procedures for making individual risk assessments before its onerous provisions were applied to reintegrated Alaska citizens. *Doe*, 259 F.3d at 992; *Pet. App. at 25a - 26a.*

Further, the Ninth Circuit's decision is not limited to only those offenders who are required to report quarterly, for life. The Ninth Circuit held that the ASORA may not be applied retroactively to any registrants, including those who need only report annually. Thus, the petitioners are simply wrong to suggest the entire opinion was based on the adoption of a verifiably false interpretation of Alaska law.

Moreover, as the court of appeals correctly held, nearly every sex offender registration and notification law that has been upheld tailored the provisions of the statute to the actual risk posed by the individual

offender. *Id.* As petitioners admit, Alaska does not seek to determine individual risk. *Resp. App. at 9a.* Rather Alaska requires the reintegrated, rehabilitated offender to collect all of the necessary information, provide it to petitioners, who then posts that information on the World Wide Web. By doing so, petitioners are telling everyone that the reintegrated offender is dangerous. Although petitioners contend it is impossible to predict future dangerousness[7], by labeling a reintegrated, rehabilitated individual a "sex offender" and by publishing his picture and private information in a public database, petitioners have told the public the individual is dangerous. As petitioners admit, they have made this prediction without any proof of present day dangerousness. *Resp. App. at 9a.* This lack of individual determination of risk was a major factor weighing in favor of finding the ASORA excessive; hence, even if there was a misstatement of Alaska law, it does not rise to the level of reversible error -- the error was harmless. Harmless error does not constitute sufficiently compelling reasons to support a petition for writ of certiorari and petitioners' argument to the contrary has no merit.

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7 . *See, Resp. App. at 9a.*

III. The Ninth Circuit's decision does not erode Alaska's ability to protect the public from sex offenders.

Lacking a cogent argument meeting the criteria of this Court's Rule 10, petitioners choose to rely on a confusing policy argument, which, in essence, seeks an exception to the prohibition on passage of Ex Post Facto Laws. *Pet. at 6 - 8.* Indeed, petitioners do not argue that the Ninth Circuit applied the wrong test, or that it misinterpreted decisions from this Court. *Id.* Rather petitioners argue that in protecting the rights of the Does, the Ninth Circuit has significantly restricted the means by which states in the Ninth Circuit can enforce their laws. *Pet. at 8.* This argument has no merit whatsoever because it is not the Ninth Circuit that prohibits retroactive application of punitive legislation; rather, it is the Ex Post Facto Clause that does so.

It is true, that by holding retroactive application of the ASORA unconstitutional, the Ninth Circuit has restricted Alaska's ability to retroactively apply certain laws. *Pet. at 8.* However, requiring Alaska to follow the Constitution of the United States and prohibiting Alaska from violating the Ex Post Facto Clause is not unreasonable; it is mandated by over 200 years of history. *See E.g., Fletcher v. Peck*, 10 U.S. (6 Cranch) 87, 138 (1810), *Calder v. Bull*, 3 U.S. (3 Dall) 386, 391 (1798).

It is not true that the Ninth Circuit has restricted the means by which all states within the Circuit may enforce their laws. *Pet. at 8.* In fact, in *Russell v. Gregoire*, 124 F.3d 1079 (9th Cir. 1997), *cert. denied sub non., Stearns v. Gregoire*, 523 U.S. 1007 (1998), the Ninth Circuit rejected an Ex Post Facto challenge to the State of Washington's SORA. Considering *Russell and Doe*, all the Ninth Circuit has done is provide a guideline for the states in the Ninth Circuit to follow when enacting registration and notification statutes. If, as in *Russell*, the statutes are narrowly tailored and minimally intrusive, they will be upheld. If, however, as in *Doe*, the statutes are not narrowly tailored to the purported regulatory purpose, they will not withstand constitutional challenge. This is consistent with decisions from this Court. *See, NAACP v. Alabama*, 377 U.S. 288, 303-304 (1964).

In *NAACP*, this Court held that where exercise of the state's regulatory power infringes on protected freedoms; the means employed must be narrowly tailored. *Id.* Clearly, all the Ninth Circuit has done is hold petitioners to established standards set down by this Court, and held that Alaska's law could not be upheld because it was excessive in relation to its purported regulatory purpose. *Doe*, 259 F.3d at 991-992; Pet. App. at 24a - 27a.

Petitioners admitted before the Ninth Circuit that the provisions of the ASORA were much more onerous

than the provisions of the Washington SORA. *Resp. App. at 3a - 4a.* When asked whether the panel was correct in determining that the Washington SORA was much less broad, and that the ASORA was much more excessive, petitioners responded by telling the panel they were correct in that analysis. *Resp. App. at 4a.* Moreover, petitioners told the panel that one of the significant differences between the Washington SORA and the ASORA was that Alaska makes no attempt to predict the risk posed by the individual offender, it just treats all persons previously convicted as presently posing a danger. *Resp. App. at 5a.* Here, petitioners argue that the Ninth Circuit's decision is going to restrict the manner in which states may enforce their laws, but that is simply not true. It is not true because, as petitioners admitted before the Ninth Circuit, no other state has a law that closely resembles the ASORA.. *Resp. App. at 7a.*

IV. The Ninth Circuit's decision is not in conflict with a decision from the Tenth Circuit.

Petitioners erroneously contend that the Ninth Circuit's decision conflicts with the Tenth Circuit's decision in *Femedeer v. Haun*, 227 F.3d 1244 (10th Cir. 2000). *Pet. at 9 - 11.* This contention is unconvincing because the Ninth Circuit properly applied the Aintent-effects@ test to Alaska law, while the Tenth Circuit applied the same test to Utah law. Application of the same body of federal law to a different set of facts or

different state statutes does not constitute the type of conflict envisioned by this Court's Rule 10.

In seeking to determine whether the particular Act in question was Aso punitive either in purpose or effect@ that it should be considered to constitute punishment, both the Tenth and the Ninth Circuit applied the seven factors enumerated in *Kennedy v. Mendoza-Martinez*, 372 U.S. at 168-169. *Doe*, 259 F.3d at 984; *Pet. App. at 8a., Femedeer*, 227 F.3d at 1248-1249. Each Court was applying this test to a different set of facts and a different appellate record. Petitioners make no assertion that the Ninth Circuit misapplied these factors, or that the Tenth Circuit relied on some properly interpreted body of federal law that the Ninth Circuit failed to consider. Rather, petitioners merely argue that in applying the same body of federal law to a different set of facts, each Court reached a different conclusion. That should certainly not be surprising, but it remains that proper application of the same body of federal law by two different appellate courts to two different sets of facts or to two different state statutes does not constitute a conflict between the Circuits. *See E.g., Weisgram v. Marley Co.*, 528 U.S. 440, 446 (2000), [conflict where federal rule was interpreted different by two or more Circuit Courts]; *Drye v. U.S.*, 528 U.S. 49, 54 (1999), [conflict where prior decisions from this Court have been interpreted differently by the Circuits]; *and see, Curry v. Baker* 479 U.S. 1301, 1302 (1986), [no conflict where

cases present unique facts closely tied to a specific State law].

Clearly, petitioners§ request for relief does not meet this Court's Rule 10 test for conflict between the Circuits. As envisioned by the Rule 10, issuance of the writ is warranted if a court of appeals has rendered a decision on federal law that is in conflict with the decision of another United States court of appeals on the same body of federal law. There is clearly no conflict between courts in this case, because both the Ninth and Tenth circuits properly interpreted and applied the same body of federal law.

Petitioners are also wrong because the Ninth Circuit specifically distinguished this case from *Femedeer*. *Doe*, 259 F.3d at 992, fn. 11. In so doing, the Ninth Circuit concluded that *Femedeer* was distinguishable because "[u]nlike the Alaska statute ... the Utah database does not include employer names and addresses, and thus does not place the sex offenders' current employment in direct jeopardy." *Id.* Indeed, in upholding the Utah statute, the Tenth Circuit concluded that "notification does not by itself prohibit sex offenders from pursuing any vocation or avocation" because the name of the employer and place of employment were not listed on the database. *Femedeer*, 227 F.3d at 1247, 1250.

The Ninth Circuit had evidence before it that constituted the "clearest proof" that employment was not

only put in jeopardy, but opportunities were lost due to the public notification in Alaska. *Doe*, 259 F.3d at 987-988. No such evidence could have been before the Tenth Circuit because employer information was not included on the database. *Femedeer*, 227 F.3d at 1247, 1250.

The Ninth Circuit further distinguished Alaska's statutory scheme from Utah's by finding that Alaska's only applies to those found guilty of a sex offense, while Utah's applied to persons civilly committed or found not guilty by reason of insanity. *Doe*, at 991; *Femedeer*, 227 F.3d at 1251-1252. This finding was directly supported by petitioners admission that Alaska's statutory scheme was unique, and that it was excessive in light of other state registration and public notification laws. *Pet. App. at 4a, 7a.*

There is no conflict between the Tenth and Ninth Circuits, and certainly not the type of conflict envisioned by this Court's Rule 10. That being the case, there are no grounds for issuance of the requested writ.

V. The Ninth Circuit did not err by disregarding the Legislature's remedial intent.

Petitioners complain that the Ninth Circuit was simply wrong in concluding that the ASORA was different from, and more punitive than registration and public notification laws enacted by other states. *Pet. at '2-16.* At the risk of being redundant, respondents are again compelled to point out that petitioners' argument has no merit and the reasons asserted therein do not fit

within the well-defined tests enumerated in this Court's Rule 10.

First, the Alaska legislature's decision to rely solely on the past conviction as evidence of future dangerousness is contrary to decisions from this Court. *Pet. at 13.* Although cited by petitioners in briefing before the Ninth Circuit, petitioners ignore this Court's decision in *Kansas v. Hendricks*, 521 U.S. 346, 360-362, (1997), wherein this Court upheld Kansas civil commitment provisions, in part, because it did not rely exclusively on the past conviction as evidence of future dangerousness. *Id.* The rationale of *Hendricks* is that if the past conviction is used as conclusive proof of future dangerousness, without any procedural protections, the particular state provisions will not pass constitutional muster. *Id.* Hence, petitioners are simply wrong to conclude that Alaska may do what other states may not do. The federal constitution applies to all states, and Alaska is not exempt for its requirements.

Petitioners are also wrong to rely on cases such as *Hawker v. New York*, 170 U.S. 189 (1898) to support the proposition that the prior conviction can be used as conclusive proof of future dangerousness. *Pet. at 13.* This is so, because the central premise in *Hawker* and its progeny is that the government may regulate a specific activity and bar felons from participating if relevant past conduct shows an unfitness to participate. Here, petitioners are not regulating a specific activity; rather,

petitioners are compelling action on the part of a reintegrated, rehabilitated prior offender by requiring him to gather and collate information and neatly package that information so petitioners can disseminate it to the public with a warning that the individual presently presents a danger. Nothing in *Hawker* could fairly be read to authorize such punitive measures.

Additionally, *Hawker* and its progeny are clearly distinguishable because laws, such as those before the Court in *Hawker*, have no effect on the individual unless the individual seeks to participate in the activity being regulated. If, the individual does not seek to participate, he will never feel the effect of the law. Here, the ASORA goes directly to the individual and compels action, e.g., gathering and collating otherwise private information, without any activity participation required to trigger its effects and application. *See, Pet. at 15.* Hence, petitioners' reliance on *Hawker*, and on laws that regulate business, etc., is misplaced. *Id.*

Moreover, petitioners' argument ignores this Court's reasoning in *Flemming v. Nestor*, 363 U.S. 603, 612-616 (1960) wherein this Court held that focusing on an activity from which an offender should be barred because of relevant past conduct is appropriate; but focusing on the person or persons to be barred presumes punitive intent. *Id.* Here, the ASORA does not bar participation in any activity that the state has the power to regulate; rather, it is aimed at the class of persons to

whom the ASORA applies. *Id., Resp. App. at 8a - 9a.* The danger posed by laws which seek to regulate the person, rather than an activity from which the person should be barred, was best expressed in a recent decision from the Massachusetts Supreme Court. In *Doe v. Attorney General*, 715 N.E.2d 37, 43 (Mass. 1999), the Massachusetts Court said:

> Registration--the requirement that a citizen regularly report to the police for an extended term of years--engages serious liberty interests, and presents an importantly distinct kind of constitutional danger. It is a continuing, intrusive, and humiliating regulation of the person himself. To require registration of persons not in connection with any particular activity asserts a relationship between government and the individual that is in principle quite alien to our traditions, a relationship which when generalized has been the hallmark of totalitarian government.

Id., [citations omitted]. Clearly, petitioners' reliance on *Hawker* and its progeny is woefully misplaced because the ASORA does not regulate an activity from which the Does should be barred because of relevant past conduct.

Next, petitioners argue that use of the Internet to allow the public access to public information does not

make Alaska's law punitive. *Pet. at 13.* But, Alaska does much more than make information available. *Resp. App. at 5a.* Alaska forces its reintegrated citizens to compile the information and provide information that is otherwise private, e.g., place of employment, name of employer, home address, vehicle description, etc. *Id.* Publication of this information makes it nearly impossible for fully reintegrated citizens to obtain and maintain employment. *Doe*, 259 F.3d at 987. Petitioners' argument ignores all of these realities and oversimplifies their case regarding Internet publication. Moreover, it also ignores this Court's characterization of the Internet as a technological advancement that allows a person to become a town crier with a voice that resonates farther than it could from any historical soapbox. Reno v. A.C.L.U., 521 U.S. 844, 869 (1997).

Petitioners' argument regarding use of the Internet is deceptive because it suggests that all they do is make the otherwise available information more readily available. *Pet. at 13-14.* But, if that is really the case then the petition for writ of certiorari is an exercise in futility because the ASORA is completely unnecessary. Why have a law that compels previously convicted and now reintegrated offenders to compile information and report that information four times per year, if the information is already available? Doesn't the simple fact that the ASORA compels the doing of an unnecessary act compel the conclusion that it is excessive in relation to

its purported regulatory purpose? Wouldn't that fact alone indicate the ASORA is nothing more than a penal measure dressed in civil clothing?

The fact is, the ASORA compels compilation by certain of its reintegrated citizens because petitioners do not have ready access and when petitioners publish that information they are telling the public these individuals are dangerous. *Pet. at 13-14.* Moreover, contrary to their suggestion, that they are merely making information available *[Id.]*, they tell the public to either use that information or be subject to criminal penalties. As an example, failure to use the information could result in a charge of endangering the welfare of a child *Ak. Stat. 11.51.100(a)(2)(A)*, or a finding of a child in need of aid *Ak. Stat. 47.10.011(7), or an* allegation of misrepresentation in a real property transfer. *Ak. Stat. 34.70.050.* Although they tell the public to use the information, they have not enacted any penalties for misuse of that information.

Unquestionably, petitioners suggestion that publication of the information on the Internet merely makes otherwise available information, more readily available is simply not true. More importantly, the argument simply does not and could not meet the criteria listed in this Court's Rule 10. Consequently, petitioners have failed to show why that argument justifies the grant of a writ of certiorari.

CONCLUSION

The petitioners having failed to identify any compelling reason to justify this Court's exercise of its discretionary jurisdiction, the request for a writ of certiorari must be denied.

RESPECTFULLY SUBMITTED;

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No. 01-729

In The

Supreme Court of the United States

RONALD L. OTTE and BRUCE BOTELHO,

Petitioners,

v.

JOHN DOE I, JANE DOE, and JOHN DOE II,

Respondents.

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

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TABLE OF CONTENTS

TRANSCRIPT OF ORAL ARGUMENT (EXCERPT), August 1, 2000 ..... 1a

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED 16a

CONSTITUTIONAL PROVISIONS 16a

ALASKA COURT RULES 16a

ALASKA STATUTES 20a

DOCKET NUMBER 99-35845

IN THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOHN DOE I, JANE DOE, AND
JOHN DOE II,

Appellants-plaintiffs

vs.

RONALD L. OTTE, COMMISSIONER
ALASKA DEPARTMENT OF PUBLIC SAFETY
AND BRUCE BOTELHO,
ALASKA ATTORNEY GENERAL

VOLUME I of I

TRANSCRIPT OF ORAL ARGUMENT (EXCERPT)
August 1, 2000

BEFORE, NELSON, REINHARDT AND THOMAS

Circuit Judges

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PROCEEDINGS

MR. ROSENSTEIN: May it please the court, my name is Ken Rosenstein and I'm representing the State of Alaska in this case. In Russell v. Gregoire this court upheld Washington's sex offender registration statute against Challenges that were -- that are similar to those asserted in this case.

CIRCUIT JUDGE REINHARDT: Well, similar in that what, they have to once notify the State register?

MR. ROSENSTEIN: In -- in Washington?

CIRCUIT JUDGE REINHARDT: In -- yes.

MR. ROSENSTEIN: If -- I think they need to keep the information current under the Washington statute if I'm not mistaken.

CIRCUIT JUDGE REINHARDT: Well, but if you -- if you live in Anchorage or in Seattle, Washington and you notify the State, you're registered with the State. That's it for life, isn't it, if you don't -- if you just stay there?

MR. ROSENSTEIN: I -- if you don't -- if you don't move.....

CIRCUIT JUDGE REINHARDT: Yes.

MR. ROSENSTEIN: .....out of King County, yes, I believe that.....

CIRCUIT JUDGE REINHARDT: Yeah, so that's not exactly similar to the requirement that you report every three months to the police department and provide specific information about everything again, is it? I

mean, what I -- I understand that both are called sex registration statutes.....

MR. ROSENSTEIN: Well, I.....

CIRCUIT JUDGE REINHARDT: .....but other than that I don't see the similarity.

MR. ROSENSTEIN: They're similar in that you do have to provide this information and in Alaska it has to be -- it has to be updated or reconfirmed periodically.

CIRCUIT JUDGE REINHARDT: Well, rather than reconfirm periodically is it true that you have to go to the police station?

MR. ROSENSTEIN: Yes, it is.

CIRCUIT JUDGE REINHARDT: Four times a year?

MR. ROSENSTEIN: Under the current law, yes.

CIRCUIT JUDGE REINHARDT: All right. Well, so both states have sex registration statutes, we can say that, not much more about the similarity?

MR. ROSENSTEIN: Well, I -- I would respectfully disagree. I think that they are similar except the Alaska statute requires that an offender do more, but I think that there are still -- that still constitutes a similarity.

CIRCUIT JUDGE NELSON: Alaska requires more, but it's so much more. In fact, it's hard for me to discern what is left out. They have to -- the name, address, aliases, photographs, physical description, motor vehicles, license numbers of motor vehicles, et cetera, place of employment, date of birth, crime for

which convicted, date of conviction, place and court of conviction, length, conditions, et cetera, et cetera. It seems it just covers everything. Now the Washington statute appeared to be much less broad, am I incorrect in that?

MR. ROSENSTEIN: No, Your Honor, you're not.

CIRCUIT JUDGE NELSON: Right.

MR. ROSENSTEIN: The Washington statute requires less information. The requirement that an offender go reconfirm this information periodically in Alaska -- I mean, if not at -- a renewal form is, if I'm not mistaken, they just confirm any changes in the information from the prior contact. It's -- so it's not an onerous task to go in and provide this -- this information periodically.

CIRCUIT JUDGE NELSON: But this applies to all sex offenders in Alaska regardless of degree or grade of offense?

MR. ROSENSTEIN: Yes, it does, Your Honor, and that§s one of the.....

CIRCUIT JUDGE REINHARDT: And then it could also -- applies for life and there's no way to ever be rehabilitated?

MR. ROSENSTEIN: There's -- it applies for life for -- under the revised statute for some offenders, those offenders who have two or more sex -- sex offense convictions or I believe it's one of what the statute terms an aggravated sex offense conviction and it's defined in the statute.

CIRCUIT JUDGE REINHARDT: And for the others it's 15 years?

MR. ROSENSTEIN: Fifteen years from the date of their unconditional discharge.

CIRCUIT JUDGE REINHARDT: And there's no procedure for anyone who may have been totally rehabilitated or cured or treated or whatever to be removed from that requirement?

MR. ROSENSTEIN: Well, that's the -- a significant difference between the Alaska statute and the Washington statute. In Alaska the government has made no effort to predict the risk that an individual sex offender poses for recidivism. Instead the Alaska statute requires all persons who are defined as sex offenders to register and that allows the public to -- or those who are interested to determine for themselves whether a particular sex offender poses a risk to those members of the public who are -- who expressed the interest to learn that information.

CIRCUIT JUDGE REINHARDT: Does the record contain evidence that the State has posted all this information on the internet?

MR. ROSENSTEIN: I -- both -- both parties.....

CIRCUIT JUDGE REINHARDT: Agree?

MR. ROSENSTEIN: .....conceded that that is what has happened.

CIRCUIT JUDGE REINHARDT: Has that occurred in the case of any of the other statutes that have been upheld?

MR. ROSENSTEIN: I -- the case law does not -- I would say no. The case law doesn't mention it, most of the other statutes in the cases that I've reviewed provide for limited -- a more limited dissemination of information that interested members of the public can go to the police station or the agency that is in charge and request information about a particular person.

CIRCUIT JUDGE REINHARDT: And I think in some they may notify the people in the neighborhood?

MR. ROSENSTEIN: That's under the Washington statute.....

CIRCUIT JUDGE REINHARDT: Yeah.

MR. ROSENSTEIN: .....where there is some actual active notification that the State goes out and informs citizens that there is a sex offender living in the neighborhood.

CIRCUIT JUDGE REINHARDT: What would you say is the statute that has been upheld by an appellate court that most closely resembles the Alaska statute?

MR. ROSENSTEIN: I could -- I don't think any of them closely resemble the Alaska statute in this particular respect where the Alaska statute provides for the public to have access to this information without any sort of filtering. As in Washington where -- when the government decides to disclose information that is in essence an endorsement, a government endorsement, that this person still poses a danger. As I've said the Alaska legislature took a different path and didn't.....

CIRCUIT JUDGE THOMAS: Why doesn't that indicate to you that the Washington statute is regulatory and this is punitive? Because the -- in Washington the

State is making some efforts to regulate, it is taking some affirmative steps and here the information is simply posted?

MR. ROSENSTEIN: It would be unprecedented to characterize posting information as -- as a punitive measure in -- in my (indiscernible - simultaneous speech).....

CIRCUIT JUDGE THOMAS: Well, let me turn the question around before you -- before you get too far. What is regulatory about this scheme?

MR. ROSENSTEIN: It is regulatory in that it provides the people of the State of Alaska with information by which they can take -- they can determine whether it is necessary for them to take steps to protect themselves against a sex offender and if so, what steps to take. And I can tell you -- I can share a personal experience where I§ve gone on the internet and checked for sex offenders living in my neighborhood and I discovered one two blocks away. And you can tell.....

CIRCUIT JUDGE REINHARDT: Do you want to tell us what you did about it, is that part of the personal experience that.....

MR. ROSENSTEIN: Pardon me?

CIRCUIT JUDGE REINHARDT: Are you going to tell us what you did about it --- I mean.....

MR. ROSENSTEIN: I -- I guess I -- I will with the court's indulgence?

CIRCUIT JUDGE REINHARDT: Well, I don't -- you said you wanted to tell us your personal experience about it?

MR. ROSENSTEIN: I could tell by -- I surmised by the description of the offense of which this person was convicted that it was a -- in the spectrum of sex offenses, a relatively benign offense from many years ago. And all I did was tell my daughter where he lived and told her to be careful. I just made her aware. That's -- in that respect -- you know, a person such as -- such as myself assesses the risk and takes -- takes the appropriate action.

CIRCUIT JUDGE THOMAS: Well, you're a trained lawyer. I mean, how is somebody supposed to make that judgment independently? For example, I mean, you have everything there from indecent exposure potentially to child kidnapping which I assume under certain conditions might involve a custody battle and all those are lumped together with the most heinous of sex offenses without any effort to -- by the State to distinguish among them -- those offenses, right?

MR. ROSENSTEIN: Correct. And -- I mean, there's a good reason for that because the State -- there are no sound tools for predicting a person's dangerous -- or dangerousness.

CIRCUIT JUDGE THOMAS: Well, if you can't predict danger at all then this information could be very misleading? If it's not a predictor of dangerousness, why give the information?

MR. ROSENSTEIN: Well, it's.....

CIRCUIT JUDGE THOMAS: I means it's obvious what the harm in giving information is, if it's not a predictor of danger then what's the benefit?

MR. ROSENSTEIN: It is not always an accurate predictor of dangerousness. I mean, there are many who think -- and I think it's the general belief that a person's past conduct is indicative of their future conduct and in some regards it's very relevant as to their future conduct. And I -- the evidence rules prove -- put strict limits on the use of past conduct as a.....

CIRCUIT JUDGE REINHARDT: See I just had -- I think you can't have it both ways. You probably can't come in and say well, this is an important thing to do, but it's not a predictor of dangerousness? You'd have to say it is a predictor of dangerousness and then you've got to answer the questions Judge Thomas was asking you about the broad scope of it. Or if you say it's not a predictor of dangerousness then I don't see any way to refute this and any justification for this statute at all?

MR. ROSENSTEIN: I may have misspoke myself if I've -- if I've suggested that it's not a predictor of dangerousness. I think that past conduct is a predictor of dangerousness, but the State has determined that it should not -- that it should not be in the business of determining, trying to assess and determine with any precision what that danger is.

CIRCUIT JUDGE THOMAS: Is it your position that all these other states who have undertaken that task are engaged in an idle exercise, that they have no ability based on their experience with law enforcement to accurately predict the level of risk?

MR. ROSENSTEIN: No, I -- I wouldn't say that that's the wrong path to take, I think it's -- it errs on the side of caution and.....

CIRCUIT JUDGE NELSON: Aren't you suggesting that there is always some potential risk with a sex

offender, but the degree of dangerousness is unpredictable?

MR. ROSENSTEIN: That's -- I think that is the assumption here that -- that sex offenders statistically are a dangerous group of offenders and that they do have a high rate of recidivism. And there are some who commit their offense and are punished and they learn from that and they lead a good life and don't reoffend and that's great.

CIRCUIT JUDGE THOMAS: But how can you put somebody really as a -- if you're broadly categorizing these folks as sex offenders how can you put somebody in the same category as a multiple rapist as a person who has abducted their own child in a custody dispute and is subject to criminal penalties? I think you'd have to agree that the relative risk is different and yet they're treated the same?

MR. ROSENSTEIN: They're treated the same as that -- in that the public is given that information. I mean, this is -- that information is publicly available irrespective of sex offender registration.

CIRCUIT JUDGE THOMAS: No, the convictions are, but the location, address, everything -- and those -- that information that they provide you is not necessarily readily available?

MR. ROSENSTEIN: It -- it is.....

CIRCUIT JUDGE REINHARDT: If it's so -- if it is readily available then we don't really need this statute?

MR. ROSENSTEIN: The statute brings the information together.

CIRCUIT JUDGE REINHARDT: So -- I mean, it must have some substantial affect or you wouldn't be bothered to be here over this statute.....

MR. ROSENSTEIN: Well.....

CIRCUIT JUDGE REINHARDT: .....if it's just, you know, the fact that it gives us all this information that's just as easily available any way and without really doing anything?

MR. ROSENSTEIN: It -- it brings the information together, it -- in one place whereas it would -- people would have to go to various court locations to learn of conviction information. Although conviction information is available from a central location independent of sex offender registration for a period of 10 years after a conviction -- or after the unconditional discharge under State law. But it – it's not – it's not a futile exercise because -- because of the particular danger imposed by sex offenders it brings that information together. It makes -- the legislature has determined that certain sex offenders who have been -- who are multiple sex offenders or may have been convicted of aggravated sex offenses are -- should be subject to lifetime registration so that during their lives the people will always be able to obtain information about them.

Let me address the -- the address -- the issues of their addresses. The Alaska Court of Appeals determined that there is -- there is not a sufficient privacy interest in a person's address that would -- that would invalidate this -- this statute. If I'm not mistaken I thought it was in Russell that this court addressed that and reached the same conclusion. If it wasn't -- if it wasn't this court this then it was in -- I think it was Paul P. from the Third Circuit and -- and the privacy -- the privacy interest in an address is -- really represents a balance and it.....

CIRCUIT JUDGE THOMAS: You said that it represents a balance, would you agree that it puts an obligation on the State to narrowly tailor the statute?

MR. ROSENSTEIN: It -- no. I think that the determination that sex offenders should register and provide this information is sufficient and that the public -- the risk to public safety posed by sex offenders is sufficient to require that -- the disclosure of their addresses.

CIRCUIT JUDGE THOMAS: So really in your view there's not any balancing to be done?

MR. ROSENSTEIN: Well, the balancing is that the general risk posed by sex offenders is substantial enough and a person's privacy interest in their address is -- is low enough that the privacy interest yields. And the -- the addresses are interesting because they are available from alternate choices, your neighbors know your address, you co-workers know your address, your employer knows your address. There are a host of -- it is not a private piece of information such as your medical records. So the privacy interest in an address is quite low. I'd like to sum up by saying that the Alaska legislature in enacting this statute had in mind and intended it to be a remedial statute in order to allow the public to assess the risk of sex offenders for themselves and to take steps that they might deem necessary to protect themselves from that risk. The effects of the statute are similarly remedial. The Does have -- you know, they've said that it amounts to supervision and there's nothing supervisory about this. The people who are required to register are free to come and go and do as they please, but they do have to register and go to the police -- a police station four times a year. But they can conduct their lives in any manner -- in any lawful

manner that they see fit. It does not amount to any supervision, they are free to come and go, they don't need anybody's permission. Supervision implies an element of control and the -- other than requiring them to register, the statute asserts no control over these individuals. In sum, it is not an ex post facto piece of legislation and it does not violate any of the Does' rights.

CIRCUIT JUDGE REINHARDT: Thank you, counsel.

MR. ROSENSTEIN: Thank you.

(END OF REQUESTED PORTION)

* * * * * *

TRANSCRIBER'S CERTIFICATE

I, Lynn Hall, hereby certify that the foregoing pages numbered 02 through 14 are a true, accurate, and complete transcript of proceedings in Docket No. 99-35845, *John Doe I, Jane Doe, and John Doe, II, vs. Ronald Otte, et al*, transcribed by me from a copy of the electronic sound recording to the best of my knowledge and ability.

12/03/01

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STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

CONSTITUTIONAL PROVISIONS

Alaska Constitution art. I, § 12 (pre-1994)

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. Penal administration shall be based on the principle of reformation and upon the need for protecting the public.

Alaska Constitution
art. I, § 22

The right of the people to privacy is recognized and shall not be infringed. The legislature shall implement this section.

U.S. Constitution
art. I, § 9

No bill of attainder or ex post facto law shall be passed.

ALASKA COURT RULES

Alaska Rules of Criminal Procedure Rule 11(c)

(c) Pleas of Guilty or Nolo Contendere. The court shall not accept a plea of guilty or nolo contendere from a defendant without first addressing the defendant personally and

(1) determining that the defendant understands the nature of the charge; and

(2) informing the defendant that by a plea of guilty or nolo contendere the defendant waives the right to trial by jury or trial by a judge and the right to confront adverse witnesses; and

(3) informing the defendant:

(i) of the mandatory minimum punishment, if any, and the maximum possible punishment provided by the statute defining the offense to which the plea is offered, and

(ii) that the defendant has the right to plead not guilty or to persist in that plea if it has already been made, or to plead guilty; and

(4) if the defendant is charged with a sex offense as defined in AS 12.63.100, informing the defendant in writing of the requirements of AS 12.63.010.

(5) in cases when a plea agreement has been accepted by a court, informing the defendant:

(i) that the defendant waives the right to appeal a sentence as excessive and waives the right to seek reduction of a sentence under Criminal Rule 35 if a plea agreement between the defendant and the prosecuting attorney provides for a specific sentence or a sentence equal to or less than a specified maximum; and

(ii) that the defendant waives the right to appeal as excessive that portion of a sentence that is less than or equal to a minimum sentence specified in a plea agreement between the defendant and the prosecuting attorney and waives the right to seek reduction of a sentence under Criminal Rule 35 to a length less than the length of the minimum sentence.

Alaska Rules Of Criminal Procedure
Rule 32. Sentencing And Punishment

(a) Sentence. Sentence shall be imposed without unreasonable delay. Sentencing in felony cases shall follow the procedures established in this rule and Rules 32.1 through 32.5. Sentencing in misdemeanor cases shall follow the procedures established in this rule and Rules 32.2(b)-(f), 32.3, and 32.5.

(b) Judgment--Execution.

(1) Execution. The judgment of conviction shall set forth the plea, the verdict or findings, and the adjudication and sentence. At the time of imposition of sentence, the judge or magistrate shall make a statement on the record explaining the reasons for imposition of the sentence. If the defendant is found not guilty or for any other reason is entitled to be discharged, judgment shall be entered accordingly. The judgment shall be signed by the judge or magistrate. When the sentence includes a term of incarceration, the clerk shall promptly deliver a copy of the judgment to a peace officer or correctional facility. If the defendant does not appear at the correctional facility at the time specified, the peace officer or a representative of the correctional facility shall promptly notify the court by affidavit.

(2) Conviction of a Corporation. If a corporation is convicted of any criminal offense, the judge shall enter judgment against the corporation and shall cause such judgment to be enforced in the same manner as a judgment in a civil action, or as otherwise provided by law.

(c) Judgment for Sex Offenses. When a defendant is convicted of a sex offense defined in AS 12.63.100, the

written judgment must set out the requirements of AS 12.63.010.

(d) Judgment for Crimes Involving Domestic Violence. In a case in which the defendant is convicted of an offense listed in AS 18.66.990(3) and the prosecution claims at sentencing that the offense is a crime involving domestic violence, the court must determine whether the offense is a crime involving domestic violence as defined in AS 18.66.990(3) and (5). This determination must be made on the record and noted on the judgment.

(e) Judgment for Crime Against a Person. [Pub. Note: Laws 1998, c. 95, § 11 amended Rule 32 by adding new subsection 32(e) to read as follows.] In a case in which the defendant is convicted of a crime against a person as defined in AS 44.41.035(j), the written judgment must set out the requirements of > AS 12.55.015(i).

[Amended effective August 15, 1987; August 28, 1989, by Laws 1989, c. 59, §§ 26, 27; January 15, 1990; July 15, 1990; January 15, 1991; September 15, 1991, by Laws 1991, c. 57, §§ 19, 20; July 15, 1992; repealed and reenacted effective July 15, 1993; amended effective July 15, 1995; January 15, 1998; amended by Laws 1998, c. 95, § 11.]

Note

Paragraphs (g) and (h) were added by ch. 59, § 27, SLA 1989 and amended by ch. 57, §§ 19 & 20, SLA 1991. Subparagraph (d)(1) was amended by ch. 59 § 26, SLA 1989.

The requirement that a judgment for conviction of a sex offense must set out the requirements of AS 12.63.010 was added by ch. 41, § 3, SLA 1994. Section 7 of [SCO

1204] is adopted for the sole reason that the legislature has mandated the amendments.

ALASKA STATUTES

Alaska Statute
§ 11.51.100(a)(2)(A)

Endangering the welfare of a child in the first degree.

(a) A person commits the crime of endangering the welfare of a child in the first degree if, being a parent, guardian, or other person legally charged with the care of a child under 16 years of age, the person

(2) leaves the child with another person who is not a parent, guardian, or lawful custodian of the child knowing that the person

(A) is registered or required to register as a sex offender under AS 12.63 or a law or ordinance in another jurisdiction with similar requirements;

Alaska Statute
§ 11.56.835

Failure to register as a sex offender or child kidnapper in the first degree

(a) A person commits the crime of failure to register as a sex offender or child kidnapper in the first degree if the person violates > AS 11.56.840

(1) and the person has been previously convicted of a crime under this section or > AS 11.56.840 or a law or ordinance of this or another jurisdiction with elements similar to a crime under this section or > AS 11.56.840; or

(2) with intent to escape detection or identification and, by escaping detection or identification, to facilitate the person's commission of a sex offense or child kidnaping.

(b) In a prosecution under (a)(2) of this section, the fact that the defendant, for a period of at least one year, failed to register as a sex offender or child kidnapper, failed to file the annual or quarterly written verification or changed the sex offender's or child kidnapper's address and did not file the required notice of change of address, is prima facie evidence that the defendant intended to escape detection or identification and, by escaping detection or identification, to facilitate the person's commission of a sex offense or child kidnaping.

(c) In this section, "child kidnaping" and "sex offense" have the meanings given in > AS 12.63.100.

(d) Failure to register as a sex offender or child kidnapper in the first degree is a class C felony.

Added by Laws 1998, c. 106, § -, eff Jan. 1, 1999.

Alaska Statute
§ 11.56.840 (1994)

A person who knowingly fails to (1) register, (2) file the written notice of change of address, or (3) file the annual written notice or statement, as required in AS 12.63.010, is guilty of a class A misdemeanor. (§ 2 ch 41 SLA 1994).

Alaska Statute
§ 12.55.185(15)

(15) "unconditional discharge" means that a defendant is released from all disability arising under a sentence, including probation and parole;

Alaska Statute
§ 12.63.010 (1994)

Registration of sex offenders and related requirements
(a) A sex offender who is physically present in the state shall register as provided in this section. The sex offender shall register within

(1) seven days of release from an in-state correctional facility;

(2) seven days of conviction for a sex offense if the sex offender is not sentenced to a term of incarceration; or

(3) 14 days of becoming physically present in the state, except the sex offender shall register within seven days of becoming physically present in the state if the sex offender

(A) is a probationer or parolee being supervised by the state as the receiving state under AS 33.36.110 - 33.36.120; or

(B) has been released from an out-of-state correctional facility where the sex offender was serving a term of incarceration for a sex offense conviction in this state.

(b) A sex offender required to register under (a) of this section shall register in person at the Alaska state trooper post or municipal police department located nearest to where the sex offender resides at the time of

registration. To fulfill the registration requirement, the sex offender shall

(1) complete a registration form that includes, at a minimum, the sex offender's name, address, place of employment, date of birth, each conviction for a sex offense for which the duty to register has not terminated under AS 12.63.020, date of sex offense convictions, place and court of sex offense conviction, all aliases used, and driver's license number;

(2) allow the Alaska state troopers or municipal police to take a complete set of the sex offender's fingerprints and to take the sex offender's photograph.

(c) If a sex offender changes residence within the state after having registered under (a) of this section, the sex offender shall provide written notice of the change to the Alaska state trooper post or municipal police department located nearest to the new residence within 10 days of the change.

(d) A sex offender required to register under (a) of this section shall annually, during the term of a duty to register under AS 12.63.020, on a date set by the department at the time of the sex offender's initial registration, provide written notice to the department of any changes to the information initially provided under (b)(1) of this section, or if there are no changes, a statement to that effect.

(e) In this section, "correctional facility" has the meaning given in AS 33.30.901. (§ 4 ch 41 SLA 1994).

Alaska Statute
§ 12.63.020 (1994)

Duration of sex offender duty to register. (a) The duty of a sex offender to comply with the requirements of AS 12.63.010 for each sex offense

(1) continues for the lifetime of a sex offender convicted of two or more sex offenses;

(2) ends 15 years following the sex offender's unconditional discharge from a conviction for a single sex offense.

(b) The department shall adopt, by regulation, procedures to notify a sex offender who, on the registration form under AS 12.63.010, lists a conviction for a sex offense that is a violation of a former law of this state or a law of another jurisdiction, of the duration of the offender's duty under (a) of this section for that sex offense. (§ 4 ch 41 SLA 1994)

Alaska Statute
§ 12.63.100 (1994)

Definitions. In this chapter,

(1) "department" means the Department of Public Safety;

(2) "sex offender" means a person convicted of a sex offense in this state or another jurisdiction regardless of whether the conviction occurred before, after, or on August 10, 1994;

(3) "sex offense" means a crime, or an attempt to commit a crime, under AS 11.41.410 - 11.41.438, 11.41.450, 11.41.455, AS 11.61.125, AS 11.66.110, former AS 11.15.120 or 11.15.134, or former AS

11.40.110 or 11.40.200, or a similar law in another jurisdiction;

(4) "unconditional discharge" has the meaning given in AS 12.55.185. (§ 4 ch 41 SLA 1994)

Alaska Statute
§ 18.65.087 (1994)

Central registry of sex offenders. (a) The Department of Public Safety shall maintain a central registry of sex offenders required to register under AS 12.63.010 and shall adopt regulations necessary to carry out the purposes of this section and AS 12.63. A post of the Alaska state troopers or a municipal police department that receives information under AS 12.63.010 shall forward the information within five working days of receipt to the central registry of sex offenders.

(b) Information about a sex offender that is contained in the central registry, including sets of fingerprints, is confidential and not subject to public disclosure except as to the sex offender's name, address, photograph, place of employment, date of birth, crime for which convicted, date of conviction, place and court of conviction, and length of sentence.

(c) Notwithstanding (b) of this section, if a sex offender has been convicted in this state or another jurisdiction of a sex offense identified as "incest," that offense may be disclosed under (b) of this section only as a "felony sexual abuse of a minor" conviction.

(d) The Department of Public Safety

(1) shall adopt regulations to

(A) allow a sex offender to review sex offender registration information that refers to that sex offender, and if the sex offender believes the information is inaccurate or incomplete, to request the department to correct the information; if the department finds the information is inaccurate or incomplete, the department shall correct or supplement the information;

(B) ensure the appropriate circulation to law enforcement agencies of information contained in the central registry;

(2) shall provide to municipal police department s the forms and directions necessary to allow sex offenders to comply with AS 12.63.010;

(3) may adopt regulations to establish fees to be charged for registration under AS 12.63.010 and for information requests; the fee for registration shall be based upon the actual costs of performing the registration and maintaining the central registry but may not be set at a level whereby registration is discouraged; the fee for an information request may not be greater than $10;

(4) shall remove from the central registry of sex offenders under AS 18.65.087 information about a sex offender required to register under AS 12.63.020 (a)(2) at the end of the sex offender's duty to register if the offender has not been convicted of another sex offense; in this paragraph, "sex offense" has the meaning given in AS 12.63.100.

Alaska Statute
§ 34.70.050 (1998)

Form of disclosure statement.

The Real Estate Commission established under AS 08.88.011 shall establish the form of the disclosure

statement required by AS 34.70.010. The disclosure statement must include a provision that notifies transferees

(1) that they are responsible for determining whether a person who has been convicted of a sex offense resides in the vicinity of the property that is the subject of the transferee's potential real estate transaction; and

(2) where information about the location of convicted sex offenders can be obtained.

Alaska Statute
§ 47.10.011(7) (1998)

Children in need of aid.

Subject to AS 47.10.019, the court may find a child to be a child in need of aid if it finds by a preponderance of the evidence that the child has been subjected to any of the following:

(7) the child has suffered sexual abuse, or there is a substantial risk that the child will suffer sexual abuse, as a result of conduct by or conditions created by the child's parent, guardian, or custodian or by the failure of the parent, guardian, or custodian to adequately supervise the child; if a parent, guardian, or custodian has actual notice that a person has been convicted of a sex offense against a minor within the past 15 years, is registered or required to register as a sex offender under AS 12.63, or is under investigation for a sex offense against a minor, and the parent, guardian, or custodian subsequently allows a child to be left with that person, this conduct constitutes prima facie evidence that the child is at substantial risk of being sexually abused;